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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195144

DATE: October 1, 1979

MATTER OF: IMI of Philadelphia, Inc.

DIGEST:

1. [Protest of Government's use of competitive solicitation to test market] in deciding whether to exercise option under current contract is denied because this method is specifically permitted by regulation.
2. Contract renewal clause should not have misled protester to believe that its contract would be renewed for 2 successive years if work was done properly where renewal clause specifically provides that Government has the option to renew contract at its "sole discretion".

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IMI of Philadelphia, Inc. (IMI), protests issuance of invitation for bids (IFB) N00383-79-B-0512, by the Department of the Navy, Aviation Supply Office, Philadelphia, Pennsylvania (Navy), for the duplication and mounting of 35mm microfilm aperture cards. IMI as the incumbent contractor objects to the Navy's testing the market, rather than exercising IMI's contract option to extend.

For the reasons that follow, we find that the Navy's action was in accordance with the Defense Acquisition Regulation (DAR).

IMI's prior contract for these services provided for an initial period of a year, with the Government retaining the option to renew the contract at its sole discretion for two successive one year periods. Each one year option period was required to be renewed separately. Although the Navy exercised its option to renew the contract with IMI for the first option year, it issued the protested

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IFB to determine whether a better price than that offered by the option for the second option year could be obtained. The contract ultimately was awarded to another firm which was the low bidder under the solicitation.

IMI contends that giving the Government the choice to either accept the low bid or exercise the option is an unfair procurement practice. IMI states that it is unfair that all bidders can readily obtain IMI's option price, and therefore know the ceiling price in the bidding. As a result of this procedure, IMI argues that small business is pitted against small business in improper competitive bidding.

Where, as here, an informal investigation of prices or other examination of the market does not clearly demonstrate that the option price is the best available, the determination whether or not to exercise the option may be made on the basis of prices received under a new solicitation. DAR § 1-1505(d)(1). In the instant case, the contracting officer consulted cognizant Navy personnel on whether IMI's option price was the best available price. Conflicting opinions were received. Unable to satisfactorily resolve these conflicting opinions, the contracting officer concluded that he could not determine, from an informal investigation of the market, whether IMI's option offered the lowest price. We see nothing improper in the issuance of the new solicitation in these circumstances.

IMI also contends that it was misled by the contract renewal clause in its contract because it believes that the clause gave the "clear indication" that if the job was done properly, the contractor would have the contract for three years. We find no validity to this argument. The contract renewal clause specifically provides that the Government shall have the option "at its sole discretion" to renew the contract.

The protest is denied.


Deputy Comptroller General
of the United States